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V18-0013 V18-0013 Case No.: Planner's intition

GEORGIA

City of Sandy Spanies Community Development

JUN 06 2018

Planner's initials:

PROJECT INFORMATION SHEET	
Address(es): 3830, 3834, 3838 Teesdale Ct. Sandy Spring 3035  Parcel Tax ID: 060343 L0475: 06034 L0463: 0603  Land Lot(s): Land District(s):  Total acreage: Current zoning: Current use: Single Family to Character area: Projected Neighborhood	3436602
Detailed request (include Ordinance/Code Section No.):  Zoning Ordinance Division 2:2 Soc. 7:32 place multiple reduce from settock from 60 to 25  side from 15 to 16	
Petitioner: CLM Invotments LL William Brukhill Petitioner's address: 4763 Butward Huy Suite 2W, Chambles Gr  Phone: 424-451-4604 Email: William @dmonls.net	A
Property owner: Pulta Owner's address: 2475 North out Pkny Sutte (O)  Phone: 678-245-5736 Email: Chad be (1440) pultagrape (On Signature (authorizing initiation of the process):  If the property is under contract and the owner is unavailable to sign, provide a copy of the contract	
- TO BE FILLED OUT BY P&Z STAFF -	
Pre-application meeting date: Anticipated application date: 06/05/16	
Anticipated BOA date: 7/10/18	2
ADDITIONAL INFORMATION NEEDED:	
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City of Sandy Springs
Community Development

### AUTHORIZATION FORM - PART I

A- The property owner must fill out the following section and have it notarized. If a property has multiple owners, each owner must separately fill out a copy of the authorization form.

Owner states under oath that he/she is the owner of the p	property described in the attached legal
description, which is made part of this application.	
Owner's name: C LM	Sworn and subscribed before me this
Address:	1
	day of 20
City, State, Zip Code:	Notary public:
Email address:	Seal:
Phone number:	
Owner's signature:	]
	Commission expires:
Applicant states under oath that:  He/she is the executor or Attorney-in-Fact under a Poor of the contract); or  He/she has an option to purchase the subject property  He/she has an estate of years which permits the appli	y (attach a copy of the contract); or
Applicant's name: William Brackfull Company name: William Brackfull Address: 4763 But and thur. Suite20 City, State, Zip Code: Chamble Gut 37363 Email address: William Ochmhons. Toput Phone number: 404-451-4604 Applicant's signature:	Sworn and subscribed before me this  O

### Variance Analysis

From Division 2.2 of Zoning Code Section 2.3.2 Placement and Height

Reduce front setback from 60' to 25'. 2.3.2 A Reduce side setback from 15' to 10' 2.3.2 C

- a. The application of the Development Code which requires a 60' front setback and 15' side setback creates an unnecessary hardship in that it would require homes to be built inconsistent with the existing homes and against the expressed desires of the HOA Advisory Committee. The 60' front setback and 15' side in the RD27 new zoning is not a stand alone requirement and the development standards which contain these requirements also require larger minimum lots sizes and wider front lot width.
- b. The size of the subject lots are smaller and narrower than the minimum design standards for the new zoning.
- c. The rezoning was not a result of the property owner's actions.
- d. The variance request is the minimum required to be consistent with the adjacent properties.
- e. The variance request is consistent with the comprehensive plan in that it allows for reduced impervious area by shortening the length of the driveway. Most importantly guiding reinvestment in established neighborhoods that preserves and reinforces the unique characteristics of the Enclave at Jett Ferry.

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### Letter of Intent

Requested Variances.

From Division 2.2 of Zoning Code Section 2.3.2 Placement and Height

Reduce front setback from 60' to 25'. 2.3.2 A Reduce side setback from 15' to 10' 2.3.2 C

Factual Details about the proposed development:

The Enclave at Jett Ferry is an existing subdivision approved by Fulton County with special zoning conditions. Those conditions is a 25' front set back and 10' side setback. The Enclave was developed by John Weiland. John Weiland was bought out by Pulte and the sale included the seven remaining lots in the Enclave. Pulte choose not to build out these seven lots and sold these seven lots to CLM Investments, LLC. In the course of the due diligence, it was discovered by CLM that the new zoning for this area required a 60' minimum front setback, 15' side and 40' rear.. During meetings with the Enclave Homeowners Advisory Committee, the main concern expressed was that CLM maintain continuity and consistency with the existing homes. The adjacent homes to 3830, 3834 and 3838 are placed at approximately 25' from the front property line.

The new zoning that is being applied to these lots also requires larger homesite and wider frontages while at the same time reducing lot coverage to 30%.

Applying the front setback of 60' would make these homes sit back further than the adjacent properties and would require that lot 5, 3838 have a much smaller home than the others in the community.

Applying the 15' side set back reduces driveway area for side entry. The lot do not meet the minimum width of 120' required for RD27 zoning making them a legal non-conforming lots.

Alternative Designs were not explored because of the stated desire of the Homeowners Advisory Committee to maintain consistency with the current design standards of the community. It would be theoretically possible to build on the 3 homesites without variances, but each home would get progressively smaller as we build from 3830 to the right toward 3838 as each lot gets smaller and the homes would be pushed against the rear setback with no back yard and huge 60' front yards. Because of reduced lot coverage under the new zoning, lots 3834 and 3838 could possibly require pervious driveways as the lots are much smaller and the extra 35' of driveway would result in approx 3% more lot coverage.

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### Exhibit A

### Legal Description of Property

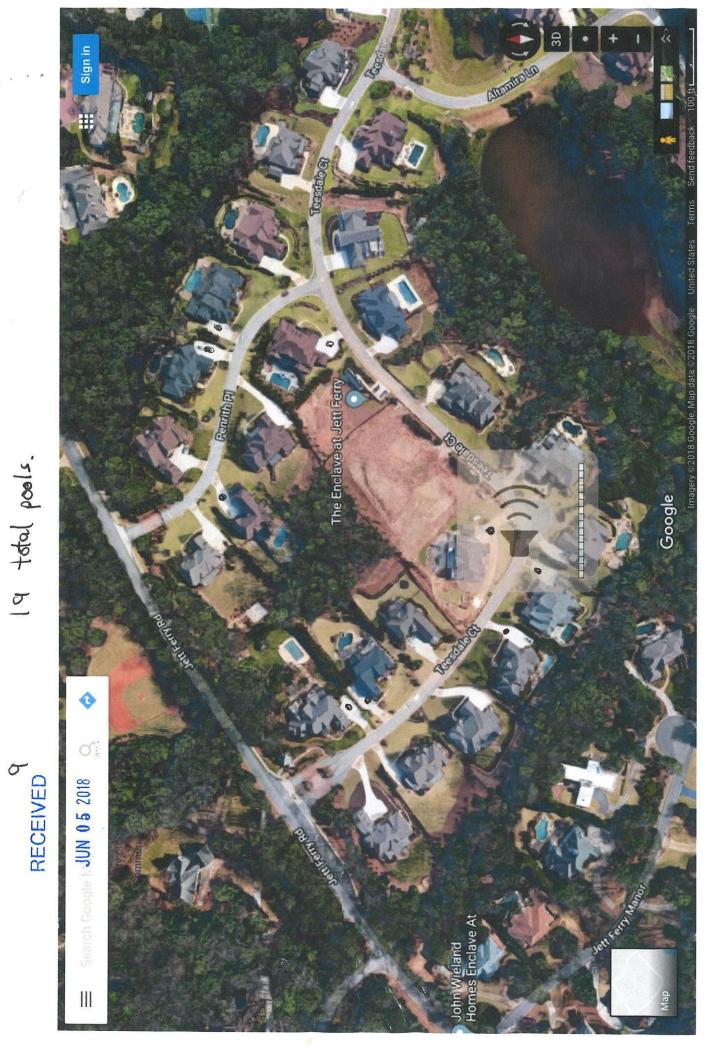
All that tract or parcel of land and being in the Land Lot 343 of the 6th District of Fulton County, GA being Lot 7, The Enclave at Jett Ferry, Phase One, as more particularly described on a plat recorded in Plat Book 309, page 10, records of Fulton County, GA as revised at Plat Book 322, Page 96 aforesaid records, which platts are incorporated herein by reference hereto.

All that tract or parcel of land and being in the Land Lot 343 and 344 of the 6th District of Fulton County, GA being Lots 5 and 6, The Enclave at Jett Ferry, Phase Two, as more particularly described on a plat recorded in Plat Book 309, page 10, records of Fulton County, GA as revised at Plat Book 321, Page 31 aforesaid records, as further revised at Plat Book 346, page 145, aforesaid records as further revised at plat book 358, page 1, aforesaid records as further revised at plat book 362, page 38, aforesaid forcords as further revised at plat book 364 page 82 aforesaid records as further revised at plat book 371 page 10 which platts are incorporated herein by reference hereto.

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### REAL ESTATE SALE CONTRACT

This REAL ESTATE SALE CONTRACT ("Contract") is made by and between PULTE HOME COMPANY, LLC, a Michigan limited liability ("Seller") and CLM INVESTMENTS LLC, a Georgia limited liability company ("Buyer").

- 1. PROPERTY. Seller is the owner of those certain parcels of real property shown and designated as: Lots 5, 6, 7, 31, 32, 33 and 34 located in The Enclave at Jett Ferry (the "Development"), and shown on the final subdivision plats entitled (i) "The Enclave at Jett Ferry, Phase One" recorded in Plat Book 322, Page 96 in Fulton County, Georgia (Lot 7) and (ii) "The Enclave at Jett Ferry, Phase Two" recorded in Plat Book 371, Page 10 in Fulton County, Georgia (Lots 5, 6, 31, 32, 33 and 34) (each a "Lot" and collectively, the "Property"), as more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof.
- 2. PURCHASE AND SALE. Seller agrees to sell and convey the Property to Buyer, and Buyer agrees to purchase and acquire the Property from Seller on the terms and conditions hereinafter set forth.
- 3. <u>PURCHASE PRICE AND PAYMENT</u>. The purchase price for the Property is \$900,000.00, and shall be paid in immediately available funds satisfactory to the Seller at Closing (as hereinafter defined), subject to any credits or adjustments pursuant to this Contract (the "Purchase Price").

### 4. DEPOSIT.

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- 4.1 <u>Deposit</u>. Within three (3) business days after the Effective Date (as servination defined), Buyer shall deliver the amount of \$25,000.00 (the "Deposit") in readily available funds to Weissman PC. Attn: Tyler Dunn, One Alliance Center, 3500 Lenox Road, 4th Floor, Atlanta, GA 30326, Email: tylerd@weissman.law, I clephone: (404) 926-4660 ("Settlement Agent"). The Deposit shall be credited against the Purchase Price at the Closing. The Settlement Agent shall deposit the Deposit in a non-interest bearing account, which shall be held and distributed by the Settlement Agent, as provided for in this Contract.
- 4.2 Exculpation of Settlement Agent. The Settlement Agent shall not be liable to either party for damages or otherwise for any action taken in good faith provided; however, that this release of liability shall not apply to the gross negligence of the Settlement Agent. In any legal action involving the Settlement Agent including interpleader action initiated by the Settlement Agent, all legal expenses reasonably incurred by the Settlement Agent including all discovery and appeals expenses shall be borne by the party against which final judgment is rendered or as otherwise ordered by the court.
- 5. <u>CLOSING.</u> Buyer agrees to purchase the Property at a single closing which shall occur on the date which is 21 days following expiration of the Feasibility Period. As used herein, the term "Closing" shall mean the date the Property is conveyed to Buyer concurrently with the delivery of the Purchase Price to Seller. The Closing will be held at the office of the Settlement Agent or such other location designated by Buyer. To the extent possible, the Closing shall be conducted without personal attendance of the parties, but through an exchange of documents and funds in escrow with the Settlement Agent.

## 6. <u>INVESTIGATION OF THE PROPERTY; STUDIES AND PLANS.</u>

- 6.1 <u>Feasibility Period</u>. The Feasibility Period (herein so called) shall be defined as a period of time beginning on the Effective Date (as hereinafter defined) and ending at 5:00 p.m. on the date that is sixty (60) days after the AMC Notice Date (as hereinafter defined).
- 6.2 <u>Suitability for Use</u>. During the Feasibility Period, Buyer shall determine, in its sole and absolute discretion, whether the Property is suitable for Buyer's intended use. Buyer shall have the unilateral right to terminate this Contract at any time before expiration of the Feasibility Period by delivering written notice thereof to Seller and the Settlement Agent whereupon the Settlement Agent shall refund to Buyer the Deposit, and neither party shall have any further obligation hereunder, except as otherwise provided in this Contract.

- Period, and if Buyer elects to go forward with Closing, from the end of the Feasibility Period until the Closing, Buyer, its agents, consultants and contractors, shall, at its sole cost and expense, have the right to enter upon the Property and to make all inspections, tests, studies, and investigations of the condition of the Property which it may deem necessary, all of which shall be undertaken at Buyer's expense. Buyer shall not permit any liens to attach to the Property by reason of the exercise of such rights or to interfere with the rights of Seller in its possession and use of the Property. After completing its investigation of the Property, if Buyer elects to terminate this Contract in accordance with this Section, Buyer shall leave the Property in substantially the condition existing on the Effective Date. Between the Effective Date and Closing, Buyer shall maintain and have in full force a policy of commercial general liability insurance issued by a company licensed to do business in Georgia, with limits of not less than \$1,000,000, combined single limit, covering liabilities for personal injury, death and property damage arising out of activities on or about the Property by Buyer and its agents and contractors. Upon the request of Seller, such policy shall name Seller as an additional insured. This Section will survive a termination of this Contract.
- Date copies of all surveys, the Final Plats, engineering plans, soil studies, environmental reports, and any other studies or reports relating to the Property currently in Seller's possession, permits, zoning, utility services, water, sanitary and storm sewer capacity, and wastewater capacity of the Property, a copy of the Declaration (as defined below) and all amendments thereto, and the budget for the Association (as defined below); however, Seller shall not be obligated to provide Buyer with any proformas, financial reports, marketing studies, or other documents prepared by or for Seller which Seller deems, at its sole discretion, to be proprietary to Seller's business. It is hereby acknowledged and agreed between the parties that Seller makes no representation or warranty of any kind, relating to the accuracy or completeness of any items and information furnished to Buyer pursuant to this Section. Further, Buyer hereby agrees to indemnify and hold Seller harmless from and against any and all claims deriands, actions, damages and liability, of any kind, which may arise from the use by Buyer, or any third party to whom copies are provided by Buyer, of any materials provided by Seller to Buyer pursuant to this Section 6.4.
- 6.5 <u>Indemnification</u>. Buyer hereby agrees to indemnify Seller and hold Seller harmless against all claims, demands and liability, including attorneys' fees, for nonpayment of services rendered to Buyer, for liens, and for damage to persons or property arising out of Buyer's investigation of the property indemnification and agreement to hold harmless shall survive the termination of this Contract or Closing.
- 6.6 Asset Management Committee. Notwithstanding anything to the contrary elsewhere in this Contract, Seller shall not be obligated to consummate this transaction unless and until this Contract shall be approved by Seller's Asset Management Committee (herein so called). Seller agrees to cause this Contract to be presented to its Asset Management Committee for its review and consideration as soon after the Effective Date as is practicable and meets the scheduling requirements of the Asset Management Committee. In the event that this Contract is not approved by Seller's Asset Management Committee on or before thirty (30) days after the Effective Date, then this Contract will automatically terminate and be of no further force or effect on and as of such date, whereupon the Settlement Agent shall refund to Buyer the Deposit, and neither party shall have any further obligation hereunder, except as otherwise provided in this Contract. Seller will provide written notice to Buyer if and when its Asset Management Committee has approved this Contract (the "AMC Notice"). The "AMC Notice Date" shall be the date the AMC Notice is provided to Buyer.

### 7. TITLE.

7.1 <u>Title to be Conveyed.</u> At Closing, Seller shall convey the Property to Buyer by Limited Warranty Deed ("Deed"), subject to the following exceptions: (i) general real estate taxes and special assessments for the year of the applicable Closing and subsequent years not yet due and payable; (ii) easements, dedications, rights-of-way, covenants, restrictions and all other matters of record; (iii) matters that a survey would reveal; and (iv) applicable building codes, ordinances, subdivision ordinances and regulations of the Governmental Authorities (as hereinafter defined). The Deed shall contain the "as-is" provisions similar to the provisions contained in <u>Section</u> 7.4.

- Commitment for Title Insurance. Within forty (40) days after the AMC Notice Date, 7.2 Buyer, at its sole cost and expense, shall cause a title commitment for the issuance of a title insurance policy for the Property ("Title Commitment") to be issued by a "Title Company" (herein so called) of Buyer's choice and delivered to Buyer and Seller, together with copies of all exception documents. If Buyer determines that the status of title reflected in such Title Commitment contains exceptions that materially interfere with the use of the Property for Buyer's purposes, Buyer shall notify Seller in writing specifying such objectionable matters no later than forty (40) days after the AMC Notice Date. If Buyer fails to timely notify Seller of its title objections, Buyer shall be deemed to have approved the condition of title. If Seller is unable or unwilling to cure such objections within five (5) days after receipt of said notice, Buyer may (within five (5) days after Seller's notice that Seller is unable or will not cure such matters) either (i) terminate this Contract by sending written notice of termination to Seller and Settlement Agent, or (ii) maintain this Contract in effect with the right to take title at such Closing subject to such objections not cured by Seller, with no reduction in the Purchase Price. Upon termination of this Contract, Settlement Agent shall return the Deposit to Buyer and thereafter neither Seller nor Buyer shall have any further obligations hereunder, except as otherwise provided in this Contract. If Buyer does not notify Seller within said five (5) day period, of its election to terminate this Contract or to maintain this Contract in effect and waive the title objection, then Buyer shall be deemed to have elected to maintain this Contract in effect subject to such title objection and without a reduction in the Purchase Price.
- 7.3 <u>Title Policy</u>. At Closing, Buyer may, at Buyer's sole cost and expense, request the Title Company to deliver to Buyer an ALTA Form B Owner's Title Insurance Policy (the "Title Policy") for the Property.
- 7.4 "AS-IS" CONDITION OF THE PROPERTY. BUYER ACKNOWLEDGES AND AGREES:
- (i) THAT EXCEPT FOR THE LIMITED WARRANTY OF TITLE TO BE CONTAINED IN THE DEED TO BE DELIVERED AT CLOSING, NEITHER SELLER ONOR IN ANY ON GENT, EMPLOYEE, ATTORNEY, CONTRACTOR OR REPRESENTATIVE OF SELLER HAS MADE ANY, AND SELLER SPECIFICALLY DISCLAIMS ANY, REPRESENTATION OR WARRANTY, STATUTORY, EXPRESS OR IMPLIED, REGARDING THE SUBJECT MATTER OF THIS CONTRACT OR ANY PART THEREOF, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE PHYSICAL NATURE OR CONDITION, ACCESS, SIZE, PERMITS, ZONING, UTILITY SERVICES, WATER, SANITARY OR STORM SEWER CAPACITY, OR VALUE, CONDITION, **PROPERTY** OR THE WASTEWATER CAPACITY OF THE MERCHANTABILITY, MARKETABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY OR THE COMPLIANCE OF THE PROPERTY OR ITS USE WITH ANY LAWS OR REGULATIONS PROMULGATED BY ANY GOVERNMENTAL AUTHORITY;
- (ii) THAT IN EXECUTING, DELIVERING, OR PERFORMING UNDER THIS CONTRACT, BUYER DOES NOT RELY UPON ANY ORAL STATEMENT TO WHOMSOEVER GIVEN, DIRECTLY OR INDIRECTLY, BY SELLER OR ANY AGENT, EMPLOYEE, ATTORNEY, CONTRACTOR, OR OTHER REPRESENTATIVE OF SELLER;
- (iii) THAT BUYER HAD AMPLE OPPORTUNITY TO CONDUCT ALL INSPECTIONS, ENGINEERING STUDIES, SOIL TESTS, ENVIRONMENTAL STUDIES, REPORTS, FEASIBILITY STUDIES, REVIEWS AND EXAMINATIONS OF THE PROPERTY, AND OTHER MATTERS RELEVANT TO THE PROPERTY AS DEEMED NECESSARY OR DESIRABLE BY BUYER;
- (iv) THAT EXCEPT FOR THE LIMITED WARRANTY OF TITLE TO BE CONTAINED IN THE DEED TO BE DELIVERED AT CLOSING, BUYER WILL RELY SOLELY UPON ITS OWN INSPECTIONS, ENGINEERING STUDIES, SOIL TESTS, FOUNDATION DESIGNS, ENVIRONMENTAL STUDIES, REVIEWS AND EXAMINATIONS OF THE PROPERTY, AND OTHER MATTERS RELEVANT TO THE PROPERTY IN MAKING THE DECISION TO PURCHASE THE PROPERTY;



- (v) TO TAKE THE PROPERTY IN ITS CURRENT PHYSICAL CONDITION, "AS IS" AND "WHERE IS" WITH ALL FAULTS ON THE CLOSING DATE, WITHOUT ANY REPRESENTATION OR WARRANTY EXCEPT FOR THE LIMITED WARRANTY OF TITLE TO BE CONTAINED IN THE DEED TO BE DELIVERED AT CLOSING;
- (vi) THAT SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO AVAILABILITY, CAPACITY, LOCATION AND/OR CONDITION OF ANY UTILITIES WHICH MAY AFFECT THE PROPERTY;
- (vii) THAT THE PURCHASE PRICE OF THE PROPERTY REFLECTS ITS EXISTING CONDITION ON THE DATE OF CLOSING; AND
- (viii) THAT THE PROVISIONS OF THIS SECTION SHALL SURVIVE CLOSING OR ANY TERMINATION OF THIS CONTRACT, AND SHALL ALSO BE REFERRED TO IN THE DEED TO BE DELIVERED BY SELLER TO BUYER AT CLOSING.

### 8. REPRESENTATIONS.

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- 8.1 <u>Seller's Representations and Warranties.</u> Seller hereby represents and warrants to Buyer as of the Effective Date and as of the Closing as follows:
- 8.1.1 <u>Authority</u>. The execution and delivery of this Contract by Seller and the consummation by Seller of the transaction contemplated by this Contract are within Seller's capacity and all requisite action has been taken to make this Contract valid and binding on Seller in accordance with its levels.
- 8.1.2 No Legal Bar. The execution by Seller of this Contract and the consummation by Seller of this transaction hereby contemplated does not, and will not (i) result in a breach of or default under any indenture, agreement, instrument or obligation to which Seller is a party and which affects all or any portion of the Property, or (ii) to the best of Seller's actual knowledge, constitute a violation of any governmental requirement.
- 8.2 <u>Buyer's Representations and Warranties</u>. Buyer hereby represents and warrants to Seller as of the Effective Date and as of the Closing the following:
- 8.2.1 <u>Authority</u>. The execution and delivery of this Contract by Buyer and the consummation by Buyer of the transaction contemplated by this Contract are within Buyer's capacity and all requisite action has been taken to make this Contract valid and binding on Buyer in accordance with its terms.
- 8.2.2 No Legal Bar. The execution by Buyer of this Contract and the consummation by Buyer of this transaction hereby contemplated does not and will not (i) result in a breach of or default under any indenture, agreement, instrument or obligation to which Buyer is a party, or (ii) to the best of Buyer's actual knowledge, constitute a violation of any material governmental requirement applicable to Buyer.
- 8.3 <u>Duty to Disclose</u>. Seller and Buyer shall disclose to the other in writing any conditions or events that arise or occur subsequent to the Effective Date, that become known to Seller or Buyer, as the case may be, and which contradict or modify any representation of such party set forth herein.

### 9. FINAL PLAT; BUYER'S COVENANTS.

9.1 Final Plat. Buyer acknowledges receipt of a copy of the Final Plats (herein so called) of the Development which contain the Lots and have been approved by the applicable Governmental Authorities (as hereinafter defined).



9.2 <u>Development Work.</u> Buyer acknowledges that Buyer is familiar with the Development and agrees that Seller shall have no obligation to perform any work or make any improvements on or to the Lots, including, but not limited to, any work, repairs or other improvements required by the Governmental Authorities to be made to a Lot. Buyer shall be obligated to perform all work necessary to the Lot and any improvement thereon (but not the common area of the Development) for the issuance of a building permit for the construction of residential improvements on the Lots, and for the issuance of a certificate of occupancy following the completion of residential improvements on the Lots.

The term "Governmental Authority" as used in this Contract shall mean any federal, state, county, municipal or other governmental department, entity, authority, commission, board, bureau, court, agency, or other instrumentality of any of them, having jurisdiction over the Property and the Development or any portion thereof, and whose approval is necessary for the satisfaction of any conditions contained in this Contract.

10. WATER SUB-METER. Buyer, at its sole cost and expense, will be responsible for the installation of a water sub-meter for each Lot prior to commencing construction on such Lot. All fees and charges associated with the installation and usage of such sub-meters shall be the responsibility of Buyer as required by the applicable Governmental Authorities and/or the Declaration. The provisions of this Section 10 shall survive the Closing of this Contract.

### 11. CLOSING PROCEDURES. At Closing:

11.1 <u>Deed</u>. Seller shall deliver to Buyer the Deed to the Property.

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- 11.2 Payment of Funds. Buyer shall pay to Seller the Purchase Price intimmediately available good funds satisfactory to Seller.
- 11.3 <u>Taxes</u>. Real estate taxes and assessments for the Property shall be prorated as of the Closing, based on the most current available information. If, however, after Closing the real estate taxes for the year covered by the apportionment are later determined to be higher or lower than those that are apportioned, an adjustment shall be made between Seller and Buyer. Seller shall be responsible for roll-back taxes.
- 11.4 <u>Non-Forcign Affidavit</u>. Seller shall deliver to Buyer the following in accordance with Section 1445 of the Internal Revenue Code and regulations promulgated thereunder an affidavit by the Seller stating, under penalty of perjury, the Seller's United States taxpayer identification number and that the Seller is not a foreign person as defined by I.R.C. 1445(f)(3).
  - 11.5 <u>Possession</u>. Possession of the Property will be delivered to Buyer at Closing.
- Buver's Closing Costs. At Closing, Buyer shall pay for the cost of: (i) prorated real estate taxes; (ii) prorated maintenance charges, standby fees and applicable assessments levied on the Property by any Governmental Authority or property owners association; (iii) premiums for any Title Policy; (iv) one half of the escrow fees charged by the Settlement Agent, if any; (vi) Buyer's attorney fees; and (v) the cost of preparing and recording the Deed.
- 11.7 <u>Seller's Closing Costs</u>. At Closing, Seller shall pay for the cost of: (i) preparation of and recording releases of liens; (ii) prorated real estate taxes; (iii) prorated maintenance charges, standby fees and applicable assessments levied on the Property by any Governmental Authority or property owners association; (iv) Seller's attorney fees; (v) roll-back taxes, (vi) all transfer fees or excise taxes due in connection with recording the Deed, and (vii) one half of the escrow fees charged by the Settlement Agent.
- 11.8 <u>Corrective Documents</u>. Seller and Buyer shall deliver documentation required to clear title to the Property of all unpermitted liens, encumbrances and exceptions, if any, and such other documents duly executed in recordable form as are contemplated herein or reasonably required by the Title Company to consummate the Closing, and delete all standard title exceptions.

rights or easements therein shall be taken by condemnation or rights of eminent domain, Buyer shall, within fifteen (15) days after having received notice thereof from Seller, elect in writing to either: (a) continue this Contract in full force and effect, notwithstanding such taking or threatened taking, in which case Buyer shall be required to continue the purchase of the Property and the Purchase Price shall not be reduced but Buyer shall be entitled to the condemnation proceeds directly attributable to the Property; or (b) terminate this Contract, whereupon any remaining Deposit shall be returned to Buyer. Failure of Buyer to make a written election as aforesaid shall constitute an election to continue this Contract in effect.

### 13. HOMEOWNERS' ASSOCIATION; PLANS APPROVAL.

13.1 <u>Homeowners' Association</u>. Buyer acknowledges that the Property is subject to the Declaration of Protective Covenants and Easements for The Enclave at Jett Ferry recorded on February 28, 2007 in Book 44541, Page 122 in the Deed Records of Fulton County, Georgia (the "Declaration"). Buyer shall be subject to mandatory membership in The Enclave at Jett Ferry Neighborhood Association, Inc. (the "Association"), which has the right to assess certain fees as provided in the Declaration. Buyer acknowledges that from the date of the Closing, Buyer shall be (i) obligated to pay any and all assessments made by the Association for any period after the Closing for the Property, and (ii) entitled to use the amenities provided for the neighborhood as set forth in the Declaration, if any.

### 13.2 Approval of Home Plans.

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Within thirty (30) days after the AMC Notice Date, Buyer shall deliver the Springs home architectural and construction plans ("Home Plans") for the Homes to be constructed upon the District and approval by Seller and/or the architectural review board or committee under the Declaration ("ARB"). The Home Plans shall consist of fully dimensioned construction plans, with window and door schedules included. The Home Plans shall also include, without, limitation, the following:

- The type, manufacturer, style and color of all exterior materials;
- A site plan with home located, grading, and all hardscape shown; and
- A landscape plan with specific species and sizes, and any additional hardscapes.

Within thirty (30) days after Seller's receipt of the Home Plans, Seller shall notify Buyer whether such plans have been approved or advise Buyer with reasonable specificity of any objections and proposed revisions to the Home Plans that would cause such plans to be approved. If Seller fails to notify Buyer within such thirty (30) day period or if the Home Plans are not approved, Buyer shall have the right to (i) postpone the Closing for a period not to exceed thirty (30) days to allow Buyer to revise, resubmit and obtain approval of such Home Plans, or (ii) terminate this Contract at any time before approval of such rejected or unapproved Home Plans, in which event the Deposit (less the Independent Consideration), shall be immediately returned to Buyer, and neither party shall thereafter have any further obligations to the other hereunder.

The Home Plans to be submitted by Buyer may be a master set of plans covering the different homes that Buyer intends to construct on the Lots and, upon approval of those plans in accordance with this <u>Section 13.2</u>, Buyer shall not be required to resubmit a particular approved plan unless substantial modifications are made to such plans. However, Buyer will be required to re-submit approved Home Plans for each Lot to the ARB upon obtaining a building permit, along with a fee payable to the Association in the amount of \$1,500 per Lot for the ARB to confirm compliance with the approved Home Plans at least thirty (30) days prior to commencing construction of a home.

The provisions of this Section 13 shall survive the Closing of this Contract.

14. REAL ESTATE COMMISSION. KW Commercial Atlanta Perimeter (license #H-44315) and its agent Joe Cannon (license #131967) represent Seller in this transaction. If Closing occurs, Seller agrees to pay

KW Commercial Atlanta Perimeter ("Broker") a real estate commission equal to 5% of the Purchase Price at Closing. Each party represents that it has not dealt with any brokers or finders with regard to this transaction, except for Broker. Seller agrees to indemnify, defend and save harmless Buyer from and against any and all claims, losses, damages, costs or expenses of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by Seller or on its behalf with any broker or finder in connection with this Contract or transactions contemplated hereby, including Broker. Buyer agrees to indemnify, defend and save harmless Seller from and against any and all claims, losses, damages, costs or expenses of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by Buyer or on its behalf with any broker or finder in connection with this Contract or transactions contemplated hereby, excluding Broker. The provisions of this Section 14 shall survive the Closing and/or termination of this Contract.

### 15. DEFAULT.

- Buyer's Default / Seller's Remedies. In the event Buyer breaches any representation or covenant of Buyer contained herein or otherwise fails to fulfill any of its obligations hereunder, and such breach or failure continues for three (3) days following notice thereof in writing from Seller to Buyer, then Buyer will be in default under this Contract and Seller may, as its sole and exclusive remedy for such default, terminate this Contract, whereupon the Seller shall be entitled to the Deposit as liquidated damages. Buyer and Seller acknowledge and agree that the Deposit is a fair and reasonable estimate of the damages that Seller may incur due to said default and each party acknowledges that such damages would be impractical if not impossible to calculate and determine. Seller hereby waives all other remedies with respect to said default, including, without limitation, the right to enforce specific performance of this Contract or collect damages, whether direct, actual, special, or consequential or otherwise. Notwithstanding the foregoing, Seller shall be entitled to recover actual damages (but not special, exemplary or punitive damages) incurred due to Buyer's breach of any representation which survives the Closing or termination of this Contract.
- 15.2 Seller's Default / Buyer's Remedies. In the event Seller breaches any representation or covenant of Seller contained herein or otherwise fails to fulfill any of its obligations hereinder, and such breach or failure continues for three (3) days following notice thereof in writing from Buyer to Seller, then Seller will be in default under this Contract and Buyer may as its sole and exclusive remedy, either: (i) terminate this Contract, whereupon the Deposit shall be refunded to Buyer; or (ii) enforce specific performance of this Contract. Buyer hereby waives all other remedies with respect to said default, including, without limitation, the right to collect damages, whether direct, actual, special, or consequential or otherwise. Notwithstanding the foregoing, Buyer shall be entitled to recover actual damages (but not special, exemplary or punitive damages) incurred due to Seller's breach of any representation, warranty, covenant, agreement or indemnity which survives the Closing or termination of this Contract.
- NOTICES. Any notice or other communication to be given or served upon any party hereto in connection with this Contract must be in writing, and shall be delivered (i) in person or via courier, (ii) by email (with a copy following in the United States mail or by other means of delivery permitted herein), (iii) overnight delivery service (including FedEx), or (iv) by certified mail, return receipt requested. If such notice is given in person, via courier or via email, such notice will be deemed to have been received, on the earlier of, when actually received, when delivered to the street address set forth below or when sent to the email address set forth below. If such notice is given by overnight delivery service, such notice will be deemed received one business day after the notice is delivered to the overnight delivery service. If such notice is given by certified mail, such notice will be deemed received 3 days after a certified letter containing such notice, properly addressed with postage prepaid, is deposited in the United States mail. Any notice, however delivered, that is confirmed or acknowledged (excluding any automatically generated electronic acknowledgment) by a party below to have been received by such party is effective notice. Notice will go to the parties at the following addresses: Any party may change its address, email address or telephone number for the purpose of this paragraph by giving written notice of such change to each of the other parties in the manner herein provided. To be effective, such notice of change must expressly state that it is given for the purpose of changing the notice provisions of this Contract.



If to Buyer:

CLM Investments, LLC

4763 Buford Highway, Suite 201

Chamblee, GA 30341

Weissman, PC
One Alliance Center

with a copy to:

One Alliance Center

3500 Lenox Road, 4th Floor Atlanta, Georgia 30326 Attention: Tyler Dunn Telephone: (404) 926-4660 Email: tylerd@weissman.law

If to Seller:

Pulte Home Company, LLC - Georgia Division

2475 Northwinds Parkway, Suite 600

Alpharetta, GA 30009 Attention: Chad Barrett Telephone: 678-245-5236

Email: Chad.Barrett@PulteGroup.com

with a copy to:

Pulte Home Company, LLC

1225 Crescent Green Drive, Suite 110

Cary, NC 27518

Attention: Mark McIntyre Telephone: (919) 816-1174

Email: mark.mcintyre@pultegroup.com

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### 17. MISCELLANEOUS.

- Assignment. Buyer may not assign its interest in this Contract without the prior written consent of the Seller, which consent will not be unreasonably withheld, conditioned or delayed; however, Buyer may assign its rights and delegate its duties hereunder without Seller's prior written consent if such assignment is to an entity in which Buyer owns a majority interest or is the managing partner of such entity. Buyer shall promptly notify Seller and Settlement Agent of such assignment. Seller may assign this Contract to an affiliate or related entity of Seller that owns the Lots, without the prior written consent of Buyer. The terms of the Contract shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.
- The covenants, agreements, representations, warranties and indemnities 17.2 Survival. contained in this Contract shall survive Closing and the termination of this Contract and shall not be merged into the Deed.
- 17.3 Time is of the Essence/Dates. Time is of the essence in the Contract. Any time period provided for in this Contract, which ends on a Saturday, Sunday, or U.S. legal holiday shall extend to 5:00 p.m. on the next day which is not a Saturday, Sunday or U.S. legal holiday.
- No Recordation or Encumbrance. Buyer shall not file this Contract or any memorandum of summary thereof of record without the prior written consent of Seller. In addition, Buyer shall not create or attempt to create against any portion of the Property any lien or other encumbrance until after Buyer acquires fee simple title to the Property.
- Exclusivity. PulteGroup, Inc., a Michigan corporation, is not a party to this Contract and Buyer acknowledges and agrees that PulteGroup, Inc. will have no obligation or liability hereunder.

- 17.6 Entire Contract: Execution. This Contract embodies the entire agreement between the parties and cannot be varied except by the written agreement of the parties. This Contract may be executed in two (2) or more counterparts, all of which together shall constitute but one and the same Contract. Facsimile or electronic mail signatures shall have the same effect as original signatures.
- Attorneys' Fees. If any legal suit, action, proceeding or arbitration is commenced by any party to enforce any provision of this Contract, the losing party will pay to the prevailing party all actual expenses incurred by the prevailing party, including costs, expenses and reasonable attorneys' fees. The prevailing party is the party who receives substantially the relief sought whether by judgment, summary judgment, dismissal, settlement or otherwise. In any suit, action, proceeding or arbitration primarily for the recovery of monetary damages, the award of reasonable attorneys' fees may not exceed the monetary damages awarded. This provision shall survive termination of this Contract and the execution and delivery of the Deed. This provision is intended to comply with N.C. Gen. Stat. § 6-21.6.
- 17.8 Effective Date. The term "Effective Date" as used herein shall mean the later date on which Seller or Buyer executes this Contract below.
- 17.9 No Construction Until Conveyance. Buyer will not commence construction on or deliver or cause to be delivered construction or any other materials to any Lot until it has paid for said Lot and received a Deed thereto as set forth in this Contract.

  City of Sandy Springs
- 17.10 Trash/Debris. Seller shall deliver lots at Closing neatly mowed; clear of weeds, trash and other matter which may be unsightly or unsanitary. After Closing on a Lot, Buyer shall keep the subject Lot neatly mowed; clear of weeds, trash and other matter which may be unsightly or unsanitary, including construction debris and rubble. Buyer shall be responsible for the removal of dirt, mud, debris, and snow from streets and roads which abut the Lots owned by Buyer. Additionally, Buyer will be responsible for its subcontractor's or agent's trash and debris and will use its best efforts to prevent any trash dumping on the Property or the Development.
- 17.11 <u>No Liens</u>. Buyer shall not create against or upon the Property, any lien or other encumbrance superior to the rights of Seller under this Contract.
- 17.12 <u>Interstate Land Sales Act</u>. Buyer represents that the transaction contemplated herein is exempt from the Interstate Land Sales Act pursuant to 15 U.S.C. § 1702(a)(7), because Buyer is purchasing the Property for the purpose of constructing residential buildings thereon.
- 17.13 Governing Law. This Contract shall be interpreted in accordance with the laws of the state in which the Property is located, both substantive and remedial.
- 17.14 <u>Construction of Contract</u>. All of the parties to this Contract have participated freely in the negotiation and preparation hereof; accordingly, this Contract shall not be more strictly construed against any one of the parties hereto.
- 18. Revocation of Offer. The offer contained herein shall be deemed to be null and void unless a fully executed copy hereof is returned to Seller on or before 5:00 p.m. on May 19, 2017 or such earlier date of which Seller may notify Buyer in writing.
- 19. No Waiver. The failure of any party to enforce any provision of this Contract shall not be construed to be a waiver of such or any other provision, nor in any way to affect the validity of all or any part of this Contract or the right of such party thereafter to enforce each and every such provision. No waiver of any breach of this Contract shall be held to constitute a waiver of any other or subsequent breach.

### 20. CONSTRUCTION DEPOSIT; DAMAGE TO DEVELOPMENT



20.1 <u>Damage to Development</u>. Buyer shall use Buyer's reasonable commercial efforts to avoid altering or causing damage to any portion of the Development, including, without limitation, streets, curbs, sidewalks, signage, landscaping, entry features and irrigation systems. Buyer shall be fully responsible for the cost of any repair or replacement of improvements within the Development made necessary by the activities of Buyer and/or its agents, contractors and employees, and shall keep all property within the Development free and clear of all claims of lien or other encumbrances based on any such work.

### 20.2 Construction Deposit.

Buyer shall pay to Seller or the Association a construction deposit in the amount of \$5,000 per Lot at Closing (collectively, the "Construction Deposit"). The Construction Deposit shall serve as security against (i) any damage caused by Buyer or any of Buyer's agents, contractors and/or employees to any portion of the Development, (ii) any lien or encumbrance that may attach to any portion of the Development as a result of the activities of Buyer or any of Buyer's agents, contractors and/or employees which is not satisfied or transferred to a bond within ten (10) days after the recording of the same, and (iii) Buyer's failure to comply with the approved Home Plans, the Declaration and/or any other applicable laws, rules or regulations in connection with construction on any of the Lots.

If Buyer fails to make any repairs or replacements within ten (10) business days after receipt of written notice from Seller and/or the Association, or, where repairs or replacements cannot be completed within ten (10) business days after receipt of written notice from Seller and/or the Association, if Buyer fails to commence such repairs and replacements within such time period and fails to complete such repairs and replacements within a reasonable period of time thereafter, Seller and/or the Association, as applicable, may perform any such maintenance, repair, replacement or correction, cause any lien or encumbrance to be discharged or satisfied, as Buyer's expense. Notwithstanding the foregoing, in an emergency or other situation requiring immediate attention, no prior notice shall be required, but Seller and/or the Association shall notify Buyer as soon as practicable thereafter. Seller and/or the Association shall be entitled to collect directly from the Buyer in an amount equal to all costs and expenses incurred by Seller and/or the Association in connection with such maintenance, repair, replacement, correction or lien, or may offset such amount due from the Construction Deposit.

Seller and/or the Association shall return the Construction Deposit, or any remaining portion thereof, for each Lot to Seller within ten (10) days after Seller sells the Lot with a home constructed on it to a third party homebuyer.

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IN WITNESS WHEREOF, the parties have executed this Contract as of the date indicated below.

### SELLER:

PULTE HOME COMPANY, LLC, a Michigan limited liability company

By: An Addington
Name: When Addington

Title: UP of Finance

Date: 3/6/18

BUYER:

CLM INVESTMENTS LLC, a Georgia limited liability company

Name: William Harold Brackbil

Title: managing with

Date: 2-20-18

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DATE:

March 7, 2018

E-MAILED: 03/07/2018

TO:

Greg Huff Will Cutler

Sheri Addington

FROM:

**Asset Management Committee** 

SUBJECT: Georgia- Jett Ferry Land Sale (7 Lots - 5.721 acres)

Conclusion: Approved

Legal: Approved

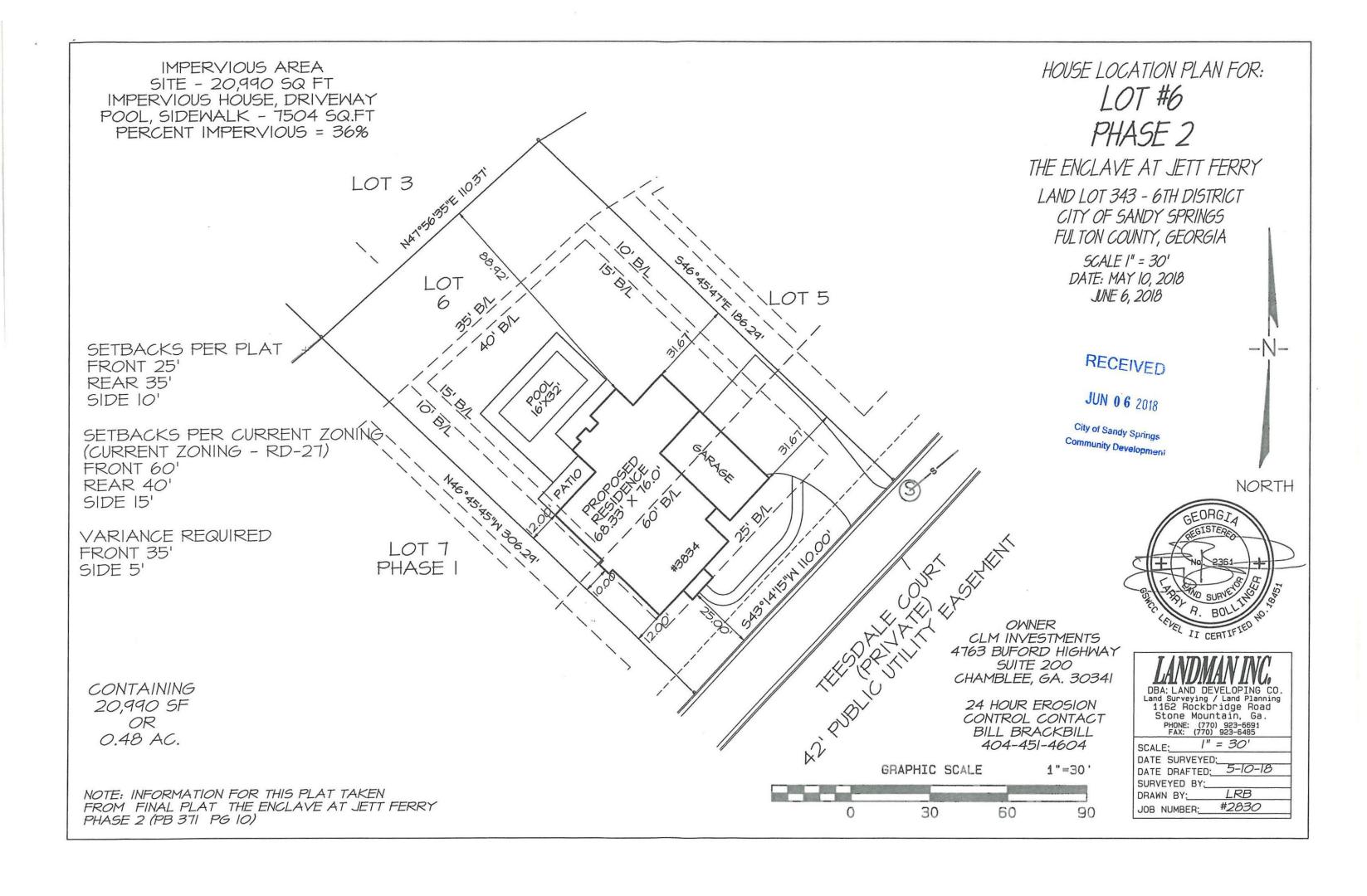
Soil and Environmental: N/A

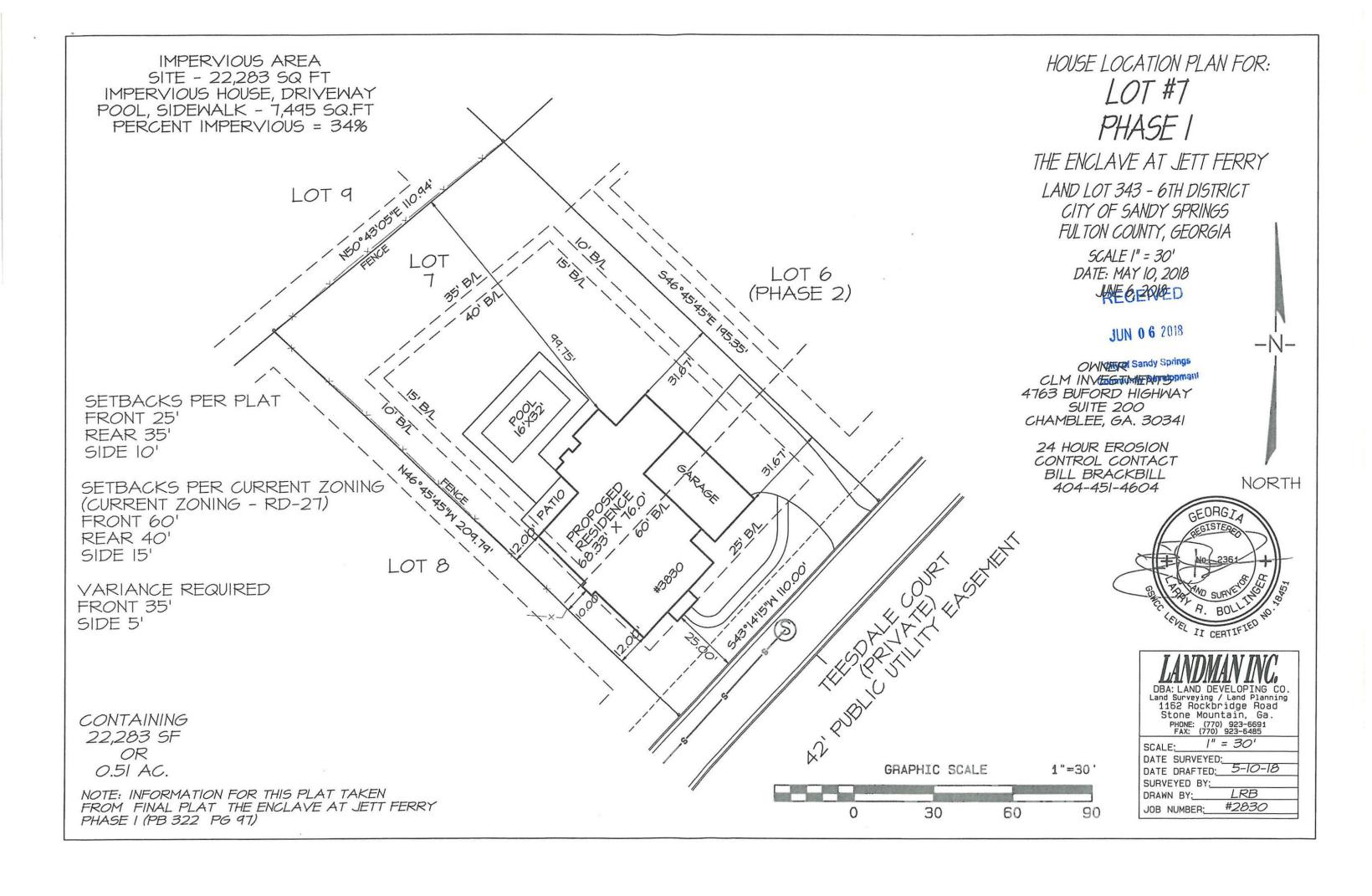
cc: File

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City of Sandy Springs

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IMPERVIOUS AREA HOUSE LOCATION PLAN FOR: SITE - 20,021 SQ FT LOT #5 IMPERVIOUS HOUSE, DRIVEWAY POOL, SIDEWALK (ON LOT)- 7,447 SQ.FT PHASE 2 PERCENT IMPERVIOUS = 37% THE ENCLAVE AT JETT FERRY LOT 3 LAND LOT 343 - 6TH DISTRICT CITY OF SANDY SPRINGS FULTON COUNTY, GEORGIA SCALE I" = 30' DATE: MAY 10, 2018 JUNE 6, 2018 LOT 4 OT RECEIVED JUN 0 6 2018 SETBACKS PER PLAT FRONT 25' City of Sandy Spring REAR 35' SIDE 10' NORTH SETBACKS PER CURRENT ZONING (CURRENT ZONING - RD-27) FRONT 60' REAR 40' SIDE 15' VARIANCE REQUIRED FRONT 35' OWNER CLM INVESTMENTS SIDE 3' 4763 BUFORD HIGHWAY SUITE 200 CHAMBLEE, GA. 30341 DBA: LAND DEVELOPING CO. Land Surveying / Land Planning 1162 Rockbridge Road CONTAINING 24 HOUR EROSION 20,021 SF CONTROL CONTACT Stone Mountain, Ga. BILL BRACKBILL OR PHONE: (770) 923-6691 FAX: (770) 923-6485 404-451-4604 0.50 AC. 1" = 30 SCALE: DATE SURVEYED:\_ DATE DRAFTED: 5-10-18 GRAPHIC SCALE 1"=30' SURVEYED BY:\_ LRB NOTE: INFORMATION FOR THIS PLAT TAKEN DRAWN BY:\_ FROM FINAL PLAT THE ENCLAYE AT JETT FERRY #2830 JOB NUMBER: 0 30 60 90 PHASE 2 (PB 371 PG 10)

